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BIA MANAGEMENT OF INDIAN TRUST FUNDS

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON
NATIVE AMERICAN AFFAIRS

OF THE

COMMITTEE ON
NATURAL RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

BUREAU OF INDIAN AFFAIRS' MANAGEMENT OF TRUST FUNDS; AND

H.R. 1846

NATIVE AMERICAN TRUST FUND ACCOUNTING AND MANAGEMENT
REFORM ACT OF 1993

HEARING HELD IN WASHINGTON, DC
SEPTEMBER 27, 1993

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So I would suggest, Madam Secretary, that the President will be personally interested in seeing reforms carried out despite rigidity, and I know the Vice President, in his efforts to reinvent government, is particularly interested in it.

The idea has been raised about congressional creation of a special master to oversee these operations. What is your opinion of that?

Ms. DEER. I would have to study that a little more. I would like to call on either one of my two staff members here to see what their reaction is.

I think what we really need are the resources to do the job, and I don't know if a special master is the way to do it, but that is my personal opinion at this point.

Mr. WILLIAMS. Do either of the staff people with you have a thought about that? The idea is to appoint a special master to oversee the Office of Trust Fund Management.

Mr. PARRIS. I think it is too early to tell whether the special master concept has got merit or not. We don't know enough about the way it would be structured, the way that the trust fund management operation would interface with the rest of the BIA and the field offices, in order to make it work.

The key here would be coordination with the BIA offices at the agency level closest to the customer to make sure of the communication of data upon which the special master of the trust fund management program would have to rely. We would have to make sure that that communication was effective before we could say that the special master concept could really work.

Mr. WILLIAMS. Madam Secretary, you spoke some about the two task forces and the efforts that are under way. I understand that those task forces were formed to begin working somewhere between six and nine months ago.

Can you give us a progress report of how they are coming and tell us again when you expect them to complete their work?

Ms. DEER. The joint BIA-tribal task force will be meeting shortly. I have asked them to start prioritizing the many recommendations. I expect that within several months we should have an idea of the priorities that the task force wishes to recommend to the BIA.

I know there is a tracking system. Some of the recommendations have been carried out, but there has not been a final determination of these priorities. We will make these progress reports available to you and your staff as the meetings are completed.

I believe the task force is scheduled to carry on its work for another year. I hope that we can complete this in less than a year because I am eager to get these priorities recommended and implemented.

Mr. WILLIAMS. Do I understand correctly there is one group working on the Individual Indian Money accounts, and another working on the management of the trust assets, minerals and timber and so on. Is that correct? Two task forces?

Ms. DEER. Yes.

Mr. PARRIS. Yes.

Mr. WILLIAMS. They have both been formed and they are meeting; is that correct?

Mr. PARRIS. There have been two meetings of the Individual Indian Money task force. I am not sure how many meetings have been held with the land records and ownership group. I know they have met. They have issued some draft reports. I am just not certain.

Mr. WILLIAMS. I guess speaking for myself but I am sure the Chairman would concur, we would appreciate being updated from time to time as to the progress of both of these working groups. This is a very high priority to this committee and to this Congress. We would like to see those task forces complete their task, and we recognize that it is an arduous task with many ramifications. They have to get it right.

And so for my own part, I am not interested at all in hurrying them. I am interested in letting them know of our interest. I am interested in being sure that they know that we want a job done with expertise, following full deliberation, and that we want it done in a timely fashion.

And then we hope you will come back and present the final report to us, and we will work together to see which is the most deliberate and proper way to implement it.

Thanks, Mr. Chairman.

Mr. RICHARDSON. I want to endorse what my colleague said, and also, Madam Secretary, if your staff could keep our staff up to date on the Land Records Management Work Group and the progress they are making on this issue.

I would like to welcome the Ranking Minority Member Craig Thomas of Wyoming and see if he would like to make an opening statement or proceed with some questions.

Mr. THOMAS. Thank you, Mr. Chairman. I am sorry that I am late. I got back late last night and had some things to do this morning.

Welcome, Madam Secretary. This is your first exposure to this committee.

Ms. DEER. I have had a very warm welcome.

Mr. THOMAS. Good. I am glad to hear that.

I am very interested in this, too. The first year I was here, I was on Mr. Synar's subcommittee, and we had some fairly extensive hearings in terms of this matter. And I must tell you I was very surprised, I was very surprised at the situation with regard to these trust funds and how they had been handled or apparently been handled.

I guess one of the most surprising things that was not available was an accounting. That has been sometime ago, a couple of years ago, and I guess obviously the question, and I won't go over it again, that I am sure you are asked is whether we are making progress. I hope the answer is yes, we are.

I noticed here you mentioned Arthur Andersen. How long has Arthur Andersen been involved in reviewing and auditing this program?

Mr. PARRIS. Arthur Andersen first audited the trust funds in 1988, 1989, and 1990, and then won the award for the contract for the reconciliation of the trust funds in May of 1991. They have been working on the reconciliation ever since.

Mr. THOMAS. So since 1991 they have been working on the reconciliation. When do you expect them to be completed?

Mr. PARRIS. The tribal reconciliation statements are expected to be issued in April of 1994. The Individual Indian Money reconciliation has not yet been initiated. It is awaiting the recommendation of an approach that is considered practical for the 300,000 Individual Indian Money accounts. That is supposed to be issued by the IIM work group that was mentioned earlier. I understand we are looking for a report by the end of this calendar year. That approach has not yet begun.

Mr. THOMAS. In the meantime, what about the return on the dollars? How is that handled in terms of earnings and so on? What establishes the yield on these dollars?

Ms. ERWIN. Are you asking currently or are you saying in comparison with Arthur Andersen?

Mr. THOMAS. No, I am just saying, are the beneficiaries receiving the reasonable amount of return on the dollars?

Ms. ERWIN. I think we are. I think if you compare it to the private sector, not only our liquid money market overnight rates we receive through Treasury, but also in the constraints of current legislation, we only invest in the derivative products of Treasury or in government, and CDs. I feel we are getting very comparable rates currently found in the private sector.

Mr. THOMAS. I guess my question, though, is, if you don't know the amount, if you don't have good records, how do you know if the Treasury is receiving the return on the proper amount of money?

Ms. ERWIN. Currently, we are taking the approach that we have a cutoff date of this fiscal year. We are currently reconciling on a monthly basis and we are maintaining the account balances as they are from that point. As we discover problems throughout the Arthur Andersen audit, they will make corrections and that will become part of the settlement at the end of the reconciliation process.

If there is an invalid balance within an account is what you are asking me, that is possible, but that would be part of the settlement once this is settled.

Mr. THOMAS. What is the Federal Government's responsibility to ensure that over time? I guess the Federal Government is responsible for these dollars as a trustee, right?

Ms. ERWIN. Correct. You are asking, what are we doing on an ongoing basis? As I said I feel we are investing and getting comparable rates. But we can only invest on the balances that are—

Mr. THOMAS. Yes, I understand. I recall you had some sort of an investment counselor, an investment contract, a couple of years ago?

Ms. ERWIN. I have only been with the BIA about a year. I think we have discussed in our strategic plans to set up an investment committee, an oversight committee, if that might be what you are referring to.

Mr. THOMAS. You have never had professional investors under contract?

Ms. ERWIN. No, we have not. We currently deal with brokers and advisers across the country, but they are not under contract. They do training in-house.

Mr. THOMAS. In addition to getting the numbers right, which is obviously important, and may be the first step, do you have any notions as to how this ought to be changed structurally?

Mr. PARRIS. You mean organizationally?

Mr. THOMAS. Well, the purpose of the funding. We are moving a great deal towards putting more responsibilities with the tribes and so on. Do you see this changing? Is there any particular reason why the Federal Government ought to be doing this at all?

Mr. PARRIS. I believe the trend is definitely towards tribes taking more control of their funds and managing them themselves or placing them with investment managers of their choosing.

With compact agreements being negotiated with tribes across the country, with 638 self-determination agreements continuing to be more active across the country, the trend is definitely toward the government getting out of the act and the tribes becoming more self-proficient. We are trying to complement that strategy as we move toward developing new approaches. With Ms. Deer's leadership, and with Secretary Babbitt's initiatives, I am sure we will be able to devise plans.

Our goal is to establish systems that would complement that transition into self-determination for tribes in the future. We want to try to help them become more knowledgeable and provide training through bills such as has been suggested by Mr. Synar, to complement that goal.

Mr. THOMAS. I would think they would be enthusiastic about that, the tribes. I should think the tribes would be enthusiastic about that.

Mr. PARRIS. They are.

Mr. THOMAS. Given the experience they have had with this system.

Mr. PARRIS. They are very excited.

Mr. THOMAS. Thank you, Mr. Chairman.

Mr. RICHARDSON. I thank the gentleman.

Let me ask the Assistant Secretary, is it your view, Madam Secretary, that the BIA will deal with this issue on its own, or do you see yourselves involving the tribes in groups like the Indian monitoring association?

Ms. DEER. We have been working closely with ITMA, and I will continue to do that, to rely on their consultation, their guidance and their input.

Mr. RICHARDSON. Now, it is my understanding that the reconciliation of tribal accounts is going to be completed in April of 1994; is that correct?

Ms. DEER. That is the goal.

Mr. RICHARDSON. How strong is that goal? I think it is essential that deadline be met. Is it your view that the deadline can be met?

Mr. PARRIS. I can answer that. Right now the reconciliation of the tribal accounts, plans are for us to attempt reconciling back to 1972 based upon the availability of the records, underlying records that the Bureau of Indian Affairs has been able to pull together.

The work that has been done so far has been very encouraging, but it must also be pointed out that the records availability for the 1972 to 1983 period is going to be a real challenge for us to be able to meet those target dates.

In order for Arthur Andersen to be able to generate those statements by April of 1994, they have to have the records available to them by October 31, 1993. We are presently working with each of the area offices and going through an unprecedented search for records across the BIA and trying to push for everything that we can pull together to enable Arthur Andersen to do that.

We also have teams going to GSA record storage centers across the country to pull together the records available there. This will be the second pass through those record storage centers to try to get the rest of the records.

I feel like we are doing everything we possibly can to make sure we comply with those dates.

Mr. RICHARDSON. Mr. Parris, you mentioned a special thorn in my side, the area offices. Tell me the process by which an agency here in Washington and the area offices play in the management of trust funds and explain the process by which a tribe can take charge of its own trust account monies.

Mr. PARRIS. Let me answer the last part first, if I may. Right now the tribes right now can, if they want to, take control of their trust funds money. They can put in a request through the agency superintendent up through the area director, who would then coordinate with the Office of Trust Funds Management. We would then look for what appeared to be a reasonable and prudent management plan for the use of those funds. In most instances, tribes have investment programs and plans for that money that are very prudent.

We haven't seen any yet that have not complied with that request, but they would be able to withdraw their income that is related to the lease income. In other words, there are two major types of income that come in from trust funds, one of which is from judgment awards or settlements, and the other from lease income such as oil or gas and range fees.

These monies, from the lease income, can be withdrawn upon request, and permission of a reasonable management plan. The judgment awards depend upon the law surrounding the establishment of that judgment award. There is restrictive language in each of the judgment awards that calls for the area director to be responsible for the proper distribution of those funds in compliance with the terms of withdrawal.

In other words, there are specific laws passed that govern how those monies can be spent. It will take either a change in legislation or a resubmission of management plans by the tribe in order to allow the tribes to withdraw judgment award money.

Mr. RICHARDSON. Now, does the area director make the decision as to whether a plan submitted by the tribe is approved or not?

Mr. PARRIS. They must approve it, yes.

Mr. RICHARDSON. How many of the area directors are financial experts?

Mr. PARRIS. I am not certain how many are financial experts.

Mr. RICHARDSON. All right. Let me put it this way: How many of these area directors in your judgment have made direct decisions on these issues?

And, Mr. Parris, I know you have had experience in this issue; you have worked very well with this subcommittee, and I don't

mean to make that question in a negative manner, but please, please tell me. Could it be that we have gotten into this mess because these area directors who have very little financial expertise and have their little fiefdoms are making these decisions?

Mr. PARRIS. From my experience in the BIA, and I have only been in the BIA about eight and a half years, but prior to coming to the BIA, I audited the Bureau of Indian Affairs back in Oklahoma at the agencies where a lot of oil and gas leases were. My experience with area directors is that they rely heavily on their staff at the area level, and since the early 1950s, when the area director concept was formed, it became apparent that their training has been more in the realm of management oversight than any kind of expertise or reliance on financial managers in any heavy way.

Mr. RICHARDSON. Mr. Parris, do you have the authority to overrule the area directors' decisions?

Mr. PARRIS. No, I don't.

Mr. RICHARDSON. You don't? Does the Assistant Secretary?

Mr. PARRIS. Oh, yes.

Mr. RICHARDSON. Why don't you have the authority to overrule them?

Mr. PARRIS. I report to the same manager they do, which is the Deputy Commissioner, and I have no direct line authority over them.

Mr. RICHARDSON. Ms. Erwin, do you have authority over them?

Ms. ERWIN. No, I am Jim's deputy director, so I am in the same situation. We have the area directors reporting to the Deputy Commissioner, the same as we do.

Mr. RICHARDSON. Well, I think for the Assistant Secretary, this is an area that I hope you really look into. These area directors, not just on trust funds, but on everything, have these fiefdoms. They report to themselves; they have no accountability.

As as we look at reorganizing the BIA, we need to look at those lines of authority. I personally think, and I have said this openly and in the press, that I would like to see a more direct relationship between you here in Washington and the tribes. I don't think we need these area offices.

Now, we need some expertise on the ground, but I think the wave of the future is self-governance where the tribes are assuming more responsibility. I think many tribes are capable and willing to make these decisions, and I just think that one of your priorities will be the scope and responsibilities of these area offices. You have 12 area directors scattered around the country making decisions that I think very responsible officials like Mr. Parris, who have been trying to get an account and basically control of some of these aberrations and mistakes, should do.

So, Madam Secretary, again, we wish to welcome you to Washington. We are very pleased with your becoming Assistant Secretary. We want to commend you on some of the recent decisions you have made, rapid response, effective; we know you are a doer, probably because like myself and Mr. Thomas, you have been in the political arena; you have run for office.

You remember Lyndon Johnson wished that everybody in his cabinet had someday run for sheriff. While I don't recommend that

for you, I think you have been in this arena before, and we want to welcome you, and we would hope that your staff could remain for the completion of the hearing in case we have further questions for them. If not, Madam Secretary, we thank you, you are excused. Is there anything you wish to say?

Ms. DEER. Yes. I would like to say that we have to keep in mind that we are dealing with a legacy of paternalism in the Bureau of Indian Affairs, and as I mentioned in my confirmation statement, paternalism is over. We now must all work together in a new partnership, and in administering the trust funds, we have to remember that there is a heavy fiduciary responsibility to do the highest and best job possible for the tribes and the individuals. I look forward to developing some new approaches, some demonstration projects as the tribes do move forward under self-determination. I appreciate the committee's warm reception, your cooperation, your receptiveness, and I really want to forge a close communication and interaction here so that we can move Indians into the twenty first century in the best way possible.

Mr. RICHARDSON. Madam Secretary, I want to just hear this before you leave. Mr. Parris, of these area directors, how many are women?

Mr. PARRIS. None.

Mr. RICHARDSON. Did you hear that, Madam Secretary.

Ms. DEER. Yes, I did.

Mr. RICHARDSON. Thank you all very much. Thank you.

Ms. DEER. Thank you.

Mr. RICHARDSON. Our second panel, Mr. Brian Crowley, director of planning and reporting, accounting and information, management division, General Accounting Office; accompanied by Mr. Thomas Armstrong, assistant general counsel, Ms. Gayle Condon, assistant director, and Mr. Robert Wagner, Jr., audit manager.

Mr. Crowley, welcome to the subcommittee. Again, we will impose the five-minute rule. We want to direct questions to you, so please proceed.

STATEMENT OF BRIAN P. CROWLEY, DIRECTOR OF PLANNING AND REPORTING, ACCOUNTING AND INFORMATION MANAGEMENT DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY THOMAS ARMSTRONG, ASSISTANT GENERAL COUNSEL; GAYLE CONDON, ASSISTANT DIRECTOR; AND ROBERT WAGNER, JR., AUDIT MANAGER

Mr. CROWLEY. Thank you, Mr. Chairman. You covered much of my testimony in your opening remarks and some of the other things that were said here this morning. My statement talks about the status of BIA's actions to correct its past problems, the problems that still need to be addressed, and the provisions of H.R. 1846 that can help BIA resolve some of these problems.

You mentioned a couple of things that we have recommended in the past, and these are recommendations to correct some problems that are pretty well understood by this committee, as shown by your opening statement and some other statements made here. But we call for things like developing written policies and procedures that hadn't been in place; arranging for periodic audits of the trust fund operations; periodic statements—the Indians should have

statements to know what their accounts are all about; arrange for training of personnel involved in trust fund operations, and review current systems to determine whether they are working properly.

A couple of things, one thing you didn't mention and I think I should emphasize to you is that OTFM can't correct BIA's trust management problems in isolation from some of the other BIA and Interior components that have a big impact on this problem, and it is the cooperation of these organizations that is essential to correcting BIA's trust management problems. MMS and BLM are involved in that.

One of the things we have recommended was to effectively address the long-term trust management problems. BIA needs to develop a comprehensive strategic plan for addressing the trust fund operations, including interfacing between other systems and operations.

Mr. Chairman, BIA has made some progress in the short term. In January 1993, BIA issued an advance copy of its strategic plan. It has divided that plan into two parts. Phase I covers the improvements needed within OTFM, and Phase II, which is still being developed, is to cover improvements and organizations outside of OTFM. Another thing that happened was that interest on the MMS oil and gas collections, which had not been distributed to account holders since 1985, was distributed to all but the Navajo Tribe during the past year, and that is pending the Navajo's look at the system used to distribute the income.

OTFM has made progress in bringing its systems reconciliations for 1993—the backlog—up to date. In response to our recommendations, BTA has conducted an organization and staffing analysis. These analyses resulted in a number of recommendations which, if effectively implemented, should improve the trust fund operations.

With specific regard to the Trust Fund Reconciliation Project, as you are probably aware, BIA created a Special Projects Team outside of OTFM in November of 1992 to oversee the Trust Fund Reconciliation Project, and part of that effort was to develop Phase II of the strategic plan. In March 1993, the Department directed the Special Projects Team to complete the reconciliations by March of 1994, but in August of 1993 the team was returned to OTFM where this work is continuing. We have recently issued a report on that, by the way, sir.

Another task force which was talked about earlier is the Solicitor-led task force on the IIM Work Group which I can get into if you would like. The Land Records Management Work Group was also established this past year.

A number of concerns that we have regarding the trust fund management improvement and the reconciliation projects are that—on particular projects—progress is lagging in a number of areas. Implementation of Phase I of BIA's strategic plan is technically on hold until the new administration has had time for review and comment. OTFM has moved forward on a number of initiatives, however, including the development of employee performance standards and desk operating procedures. Phase II of the plan is moving ahead very slowly, and that is primarily because of the Department's directive to focus priority attention on the reconciliation project.